THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

W.P.No.6025 of 2002

Date:06.07.2007

Between:

K.Kondala Rao

.. PETITIONER

AND

The Commissioner of Prohibition and Excise and others.

..RESPONDENTS

ORDER:

The petitioner is the owner of a lorry bearing No.ATK 9545. On 27.09.1995, it was intercepted at Sullurupet. The inspection revealed that 72 liquor bottles were found in a gunny bags on the roof of the cabin. A case in P.R.No.449/94-95 was registered under Section 34 of the A.P. Excise Act, 1968. Proceedings were also initiated before the Deputy Commissioner of Prohibition and Excise, Guntur, the second respondent. Through an order, dated 28.07.2000, the second respondent directed confiscation of the lorry. Aggrieved thereby, the petitioner filed an appeal before the Commissioner of Prohibition and Excise, the first respondent. The appeal was dismissed on 04.02.2002. Hence this writ petition.

The petitioner contends that though he has submitted an explanation, after receiving the show cause notice, dated 28.10.1996, the second respondent proceeded as though no explanation has been submitted; and thereby, a patent error had crept in. It is also pleaded that the first respondent, though was convinced that the explanation has been submitted, did not

interfere with the order passed by the second respondent.

On behalf of the respondents, a counter-affidavit is filed. The facts, commencing from the interception of the lorry, up to the stage of confiscation are stated. It is asserted that the petitioner did not submit any explanation to the show cause notice.

Heard the learned counsel for the petitioner and the learned Government Pleader for Excise.

This Court cannot sit as an appellate authority over the findings on merits. The emphasis would be only to see whether any procedural irregularity has taken place in the proceedings before respondents 1 and 2.

The petitioner admitted that he received the show cause notice, dated 28.10.1996, and pleaded that he has submitted explanation, denying complicity on his part. A copy of the explanation is also filed in the material papers. The second respondent made a categorical observation that the petitioner failed to submit his explanation. If this were to have been true, there does not exist any scope for interference.

In the appeal before the first respondent, the petitioner raised a specific ground about the non-consideration of his explanation. In his order, the first respondent observed as under:

> "I have gone through the records placed before me, including the orders of Deputy Commissioner, panchanama etcetera. The contention of the appellant is that the 72 liquor bottles were being carried by passengers in gunny bags and were placed in the cabin. In his explanation submitted to the Deputy Commissioner, he himself had mentioned that the gunny bags containing liquor bottles were found on

the top of the lorry".

From this, it is evident that the explanation submitted by the petitioner was very much present in the record and a specific reference is made by the first respondent, to it. Therefore, a serious irregularity has taken place in the proceedings before the first respondent, inasmuch as he proceeded as though the petitioner did not submit his explanation at all. The first respondent ought to have remanded the proceedings, instead of himself, examining the purport of the explanation.

The writ petition is accordingly allowed and the orders passed by respondents 1 and 2 are set aside. The matter is remanded to the second respondent for fresh consideration and disposal, in accordance with law. There shall be no order as to costs.

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06.07.2007

kdl

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